

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 1629—TAXES

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, part 1629 was added, effective Oct. 10, 1997.

#### Subpart 1629.4—Contract Clauses

##### 1629.402 Foreign contracts.

The clause set forth in section 1652.229-70 shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico.

### PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

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AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

#### Subpart 1631.2—Contracts With Commercial Organizations

##### 1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

##### 1631.201-70 FEHBP credits.

The provisions of FAR 31.201-5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments that include, but are not limited to—

(a) Coordination of benefit refunds;

(b) Hospital year-end settlements;

(c) Uncashed and returned checks;

(d) Utilization review refunds;

(e) Refunds attributable to litigation with subscribers or providers of health services; and

(f) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

##### 1631.203-70 FEHBP General and Administrative (G&A) expenses.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a “dividend or retention formula.”

##### 1631.205 Selected costs.

##### 1631.205-41 Taxes.

5 U.S.C. 8909(f)(1) prohibits the imposition of taxes, fees, or other monetary payment, directly or indirectly, on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities. Therefore, FAR 31.205-41 is modified to include those taxes as unallowable costs. The prohibited payments, referred to elsewhere in these regulations as “premium taxes,” applies to all payments directed by States or municipalities, regardless of how they may be titled,

to whom they must be paid, or the purpose for which they are collected, and it applies to all forms of direct and indirect measurements on FEHBP premiums, however modified, to include cost per contract or enrollee, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

[56 FR 57496, Nov. 12, 1991]

**1631.205-70 FEHBP public relations and advertising costs.**

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205-1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

**1631.205-71 FEHBP bad debts.**

Erroneous benefit payments are not automatically disallowed by FAR 31.205-3.

**1631.205-72 FEHBP compensation for personal services.**

Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

**1631.205-73 FEHBP interest expense.**

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205-20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHB Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

**1631.205-74 FEHBP losses on other contracts.**

FAR 31.205-23 shall not be construed to prohibit the application of the normal "loss carry forward" principle that is fundamental to continuing insurance contracts that are based on experience rating.

**1631.205-75 Selling costs.**

(a) FAR 31.205-38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHB plan.

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season Health fairs and other similar activities at which carriers give enrollees information about their choices among health plans (but see FAR 31.205-1 'Public relations and advertising costs', and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices, Subchapter S2-3(f) 'Controlling contacts between employees and carriers').

[52 FR 16041, May 1, 1987, as amended at 62 FR 47575, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997 section 1631.205-75(b), was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

**1631.205-75 Selling costs.**

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(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season health fairs and other similar activities sponsored by Government agencies (but see FAR 31.205-1 "Public relations and advertising costs", and Federal Personnel Manual Supplement 890-1, Subchapter S2-3(f) "Controlling contacts between employees and carriers").

**1631.205-76 Trade, business, technical, and professional activity costs.**

(a) FEHBP participating plans, carriers, and underwriters shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with

trade, business, technical, and professional activities (FAR 31.205-43) when the allocable costs of such participation to the FEHBP will exceed \$1,000 annually and when the carrier or underwriter allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEHBP.

(b) When approval of costs for membership in an organization is required, the carrier or underwriter must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing care and services to FEHBP enrollees, and that the organization is not engaged in activities such as those cited in FAR 31.205-22 (lobbying costs) for which costs are not allowable.

**1631.205-77 FEHBP start-up and other nonrecurring costs.**

Precontract costs (FAR 31.205-32) shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

**1631.205-78 FEHBP printed material costs.**

Unless OPM determines that it is in the best interest of the FEHBP to do otherwise, if a carrier orders printed material that is available from the Government Printing Office (GPO) under the "rider system" from another source, the allowable contract charges shall be the lesser of the amount actually paid or the cost that would have been incurred had the carrier ridden OPM's GPO order.

**1631.205-79 Mandatory statutory reserves.**

Charges for mandatory statutory reserves are not allowed unless provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the carrier and which may be used only with the

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specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the carrier, a pro rata share based upon FEHBP's contribution to the total carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.

### **1631.205-80 Major subcontractor service charges.**

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits, and payment or provision of actual health services, and/or assumption of insurance risk or underwriting, when costs are determined on the basis of actual costs incurred or experience rating, any amount that exceeds the allowable cost of the subcontract (whether entitled service charge, profit, fee, contribution to reserve, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the service charge negotiated between OPM and the Carrier.

## **PART 1632—CONTRACT FINANCING**

### **Subpart 1632.1—General**

Sec.

1632.170 Recurring premium payments to carriers.

1632.171 Clause—community-rated contracts.

1632.172 Clause—experience-rated contracts.

### **Subpart 1632.6—Contract Debts**

1632.607 Tax credit.

1632.617 Contract clause.

### **Subpart 1632.7—Contract Funding**

1632.770 Contingency reserve payments.

1632.771 Non-commingling of FEHBP funds.

1632.772 Contract clause.

### **Subpart 1632.8—Assignment of Claims**

1632.806-70 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

## **Subpart 1632.1—General**

### **1632.170 Recurring premium payments to carriers.**

(a) *Recurring payments to carriers of community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the Federal Employees Health Benefits (FEHB) Fund.

(b)(1) *Recurring payments to carriers of experience-rated plans.* OPM will make payments on a letter of credit (LOC) basis. Premium payments received for the plan, less the amounts credited to the contingency and administrative reserves, will be made available for carrier drawdown not later than 30 days after receipt by the FEHB Fund. In addition, contingency reserve and interest distribution payments will be made available for carrier drawdown from the LOC account. Carriers will use the LOC account in accordance with guidelines issued by OPM.

(2) Withdrawals from the LOC account will be made on a checks-presented basis. Under a checks-presented basis, drawdown on the LOC is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment.

(3) OPM may grant a waiver of the restriction of LOC disbursements to a checks-presented basis if the carrier requests the waiver in writing and demonstrates to OPM's satisfaction that the checks-presented basis of LOC disbursements will result in significantly increased liability under the contract, or that the checks-presented basis of LOC disbursements is otherwise clearly and significantly detrimental to the operation of the plan. Payments to carriers that have been granted a waiver may be made by an alternative payment methodology, subject to OPM approval.

[57 FR 14360, Apr. 20, 1992]